

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/SB 152

INTRODUCER: Commerce Committee and Senator Lynn

SUBJECT: Sales Tax Exemption/Drinking Water in Containers

DATE: March 24, 2010

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hrdlicka	Cooper	CM	Fav/CS
2. _____	_____	FT	_____
3. _____	_____	WPSC	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 152 imposes an environmental surcharge on bottled water of 6 percent of the sales price of each item, article, or group of items of or containing bottled water when sold at retail. The surcharge is collected and enforced in the same manner as the sales and use tax.

Funds collected from the surcharge shall be deposited into the Ecosystem Management and Restoration Trust Fund within the Department of Environmental Protection.

CS/SB 152 creates an undesignated section of Florida Statutes.

II. Present Situation:

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. The statutes currently provide more than 200 different

exemptions. Florida imposes a 6 percent tax on tangible personal property sold, used, consumed, distributed, stored for use or consumption, rented, or leased in Florida.¹

Exemption for Drinking Water from Sales and Use Tax

The current exemption for drinking water sold in containers in s. 212.08(4)(a)1., F.S., was enacted in 1998;² it was later amended in 2001 to expand the exemption for water in containers that were not carbonated or flavored, but that did have minerals added somewhere other than at a water treatment facility regulated by the Department of Environmental Protection (DEP) or the Department of Health (DOH).³ Water that had minerals added in a water treatment facility regulated by DEP was exempt prior to the 2001 amendment.

In 1998, every agency had to present to the Florida Legislature legislative proposals, as were appropriate, that would provide the agency with statutory authority for existing rules or portions thereof which the agency deemed necessary but which had exceeded the agency's rulemaking authority under the new Administrative Procedures Act (1996) and subsequent court interpretation. The ability of an agency to promulgate a rule had changed such that a specific grant of rulemaking authority from the Legislature was necessary to adopt a rule.⁴

The Department of Revenue's (DOR) Rule 12A-1.019, F.A.C. (1997), which exempted naturally carbonated or mineral water from sales tax, was codified by legislation in 1998. Previously, water in general had been exempt from taxation, not exempting mineral water or carbonated water.⁵ The estimated fiscal impact of adding this exemption was zero, because DOR was already exempting these sales by rule.

Additionally, the 1998 legislation added current language exempting from sales tax water delivered to purchasers through pipes or conduits, or delivered for irrigation purposes.

Bottled Water and Environment

U.S. residents drink more bottled water annually than any other beverage except carbonated soft drinks. An estimated 15 percent of water used for drinking comes from bottled water. In fact, the U.S. consumes the largest volume of bottled water in the world; over 8 billion gallons of water are sold annually in the U.S., for about \$15 billion. This is equivalent to about 36 billion bottles of water. However, this is also only about 15 percent of all bottled beverages sold.⁶

“The bottled water industry can be divided into two primary business models. The first model is the home and office delivery (HOD) of the three and five gallon

¹ See ss. 212.05 and 212.06, F.S.

² Chapter 97-221, L.O.F.

³ Chapter 2001-225, L.O.F.

⁴ Previously, a general grant of rulemaking authority was adequate, and agencies had wide discretion to adopt rules whether the statutory basis was specific or implied from the enabling statutes.

⁵ Section 212.08(4)(1), F.S. (1997).

⁶ Testimony of Mae Wu, J.D., Staff Attorney, Natural Resources Defense Council, and Joseph k. Doss, President and CEO, of the International Bottled Water Association, before the U.S. Senate Committee on Environment and Public Works, Subcommittee on Transportation Safety, Infrastructure Security, and Water Quality, at a hearing entitled “Quality and Environmental Impacts of Bottled Water,” September 10, 2008, available at http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=1032e2b2-802a-23ad-444f-86bdeb03778d (last visited 3/24/2010).

bottles used with water coolers, which accounts for about 20% of the bottled water market. ... The second model is retail sales of bottled water to consumers in 2 ½ gallon, 1 gallon, and smaller sized bottles (e.g., half liter and liter), generally through convenience and grocery stores, as well as vending machines. Retail business accounts for about 80% of the bottled water market and is the largest and fastest growing segment of the United States bottled water industry.”⁷

Bottled water is generally either sourced from groundwater or is processed as purified, sterile, or drinking water. Groundwater sources account for an estimated 2/3 of bottled water companies. Processed waters are sourced from either groundwater or from municipal water systems.⁸

Most bottles used for water and other beverages are made from Polyethylene Terephthalate (PET), which is a material “favored by many beverage companies for bottled beverages due to its light weight and durability.”⁹ Different types of plastics require different infrastructures for recycling. “Recycled plastic can be made into fleece clothing, polyethylene bin liners, plastic bottles, flooring, window frames, building insulation board, video and compact disc cassette cases, fencing, garden furniture, fiber filling for sleeping bags and duvets, garden sheds, seed trays and a variety of office accessories.”¹⁰ Much of the recycled PET in the U.S. is purchased by Asia. The value of recycled PET has been steadily increasing due to the wide variety of uses.

The American Beverage Program released a report in October 2009 that found that 74 percent of Americans had access to curbside recycling at their homes and 92 percent had some sort of access to a recycling program.¹¹ Almost 100 percent of bottles used in the HOD model of bottled water retail are recycled; these larger bottles are routinely returned to the retailer, sanitized, and reused up to 20 to 40 times, and at the end of their lifecycle are sent by the bottler to be recycled. However, only about 21 percent of the smaller bottled water containers are recycled.¹² Bottled water makes up about 0.3 percent of the U.S. municipal waste stream, but PET bottles account for over 2 million tons of trash in U.S. landfills each year. Plastics in general make up about 11.7 percent of municipal solid waste.¹³

Bottled water is considered a healthy choice for people’s diets. Additionally, the convenience of bottled water makes it a useful resource for aid following natural disasters and other events. Use of bottled water is expected to continue to grow.

Many companies have advertising campaigns to encourage consumer to use reusable containers for drinking water and to recycle used water bottles. Companies have moved towards being “green” by using bottles that are largely made from recycled materials. Water bottles are also

⁷Testimony of Doss, *id.*

⁸ *Id.*

⁹ American Beverage Association, *Packaging – Materials*, available at <http://www.ameribev.org/minisites/recycling/packaging/materials.php> (last visited 3/24/2010).

¹⁰ American Beverage Association, *Packaging - Reincarnation*, available at <http://www.ameribev.org/minisites/recycling/packaging/materials.php> (last visited 3/24/2010).

¹¹ 2008 ABA Community Survey, Final Report September 2009, available at <http://www.recycletogether.com/sites/default/files/ABA%20Final%20Report09-28-09.pdf> (last visited 3/24/2010).

¹² Beverage containers are recycled at an overall rate of about 25 percent.

¹³ Fn. 6, *supra*.

being made with lighter-weight plastics.¹⁴ Additionally, some companies have developed bottles which are biodegradable, or “compostable,” containers made from corn.¹⁵

Ecosystem Management and Restoration Trust Fund

The Ecosystem Management and Restoration Trust Fund is administered by the Department of Environmental Protection (DEP). Trust fund monies are used to fund:

- Detailed planning for and implementation of programs for the management and restoration of ecosystems;
- Development and implementation of surface water improvement and management plans and programs under ss. 373.451 – 373.4595, F.S.;
- Activities to restore polluted areas of the state, as defined by DEP, to their condition before pollution occurred or to otherwise enhance pollution control activities;
- Activities to restore or rehabilitate injured or destroyed coral reefs;
- Activities by DEP to recover moneys as a result of actions against any person for a violation of ch. 373, F.S.;
- Activities authorized for the implementation of the Leah Schad Memorial Ocean Outfall Program implemented in s. 403.086(9), F.S.; and
- Activities to preserve and repair the state’s beaches as provided in ss. 161.091 – 161.212, F.S.¹⁶

III. Effect of Proposed Changes:

Section 1 imposes an environmental surcharge on bottled water of 6 percent of the sales price of each item, article, or group of items of or containing bottled water when sold at retail. The surcharge is collected and enforced in the same manner as the sales and use tax under s. 212.05, F.S.

Funds collected from the surcharge shall be deposited into the Ecosystem Management and Restoration Trust Fund within the Department of Environmental Protection.

Section 1 creates an undesignated section of Florida Statutes.

Section 2 provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁴ See International Drinking Water Association, Recycling and Environment, available at <http://www.bottledwater.org/content/recycling-and-environment> (last visited 3/24/2010); and American Beverage Association, minisite on recycling available at <http://www.ameribev.org/minisites/recycling/> (last visited 3/24/2010).

¹⁵ Fn. 6, *supra*. This technology is relatively new to the market and is not widely used yet.

¹⁶ This provision expires on July 1, 2010, pursuant to s. 33, ch. 2009-82, L.O.F.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference (REC) has yet determined the impact of this bill. However, the REC's 2010 Florida Tax Handbook estimates that the exemption for water from the sales and use tax would generate about \$42.3 million in FY 2010-2011.¹⁷

B. Private Sector Impact:

Retailers would be required to collect the surcharge on bottled water products, and consumers of these products would be required to pay the surcharge on their purchases. This surcharge would apply equally to 5 gallon bottles of water, 16 ounce bottles of water, or bottles of water purchased with meals at a restaurant.

C. Government Sector Impact:

DOR has not yet evaluated the impact of this CS on the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by the Commerce Committee on March 24, 2010:**

The CS substantially differs from the bill as originally filed in that:

- The exemption from sales and use tax for bottle water is retained; and
- A 6% environmental surcharge is levied on bottled water when sold at retail, with funds being deposited into the Ecosystem Management and Restoration Trust Fund.

¹⁷ Florida Revenue Estimating Conference, 2010 Florida Tax Handbook, Including Fiscal Impact of Potential Changes, p. 151.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
